

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Capital Crimes Litigation Act is amended by  
5 changing Sections 10 and 15 as follows:

6 (725 ILCS 124/10)

7 Sec. 10. Court appointed trial counsel; compensation and  
8 expenses.

9 (a) This Section applies only to compensation and expenses  
10 of trial counsel appointed by the court as set forth in Section  
11 5, other than public defenders, for the period after  
12 arraignment and so long as the State's Attorney has not, at any  
13 time, filed a certificate indicating he or she will not seek  
14 the death penalty or stated on the record in open court that  
15 the death penalty will not be sought.

16 (a-5) Litigation budget.

17 (1) In a case in which the State has filed a statement  
18 of intent to seek the death penalty, the court shall  
19 require appointed counsel, after counsel has had adequate  
20 time to review the case and prior to engaging trial  
21 assistance, to submit a proposed estimated litigation  
22 budget for court approval, including the use of whenever  
23 possible of investigators and other litigation support  
24 provided by the Office of the Appellate Defender, that will  
25 be subject to modification in light of facts and  
26 developments that emerge as the case proceeds. Case budgets  
27 should be submitted ex parte and filed and maintained under  
28 seal in order to protect the defendant's right to effective  
29 assistance of counsel, right not to incriminate him or  
30 herself and all applicable privileges.

31 (2) The litigation budget shall serve purposes  
32 comparable to those of private retainer agreements by

1 confirming both the court's and the attorney's  
2 expectations regarding fees and expenses. Consideration  
3 should be given to employing an ex parte pretrial  
4 conference in order to facilitate reaching agreement on a  
5 litigation budget at the earliest opportunity.

6 (3) The budget shall be incorporated into a sealed  
7 initial pretrial order that reflects the understandings of  
8 the court and counsel regarding all matters affecting  
9 counsel compensation and reimbursement and payments for  
10 investigative, expert and other services, including but  
11 not limited to the following matters:

12 (A) The hourly rate at which counsel will be  
13 compensated;

14 (B) The hourly rate at which private  
15 investigators, other than investigators employed by  
16 the Office of the State Appellate Defender, will be  
17 compensated; and

18 (C) The best preliminary estimate that can be made  
19 of the cost of all services, including, but not limited  
20 to, counsel, expert, and investigative services, that  
21 are likely to be needed through the guilt and penalty  
22 phases of the trial. The court shall have discretion to  
23 require that budgets be prepared for shorter intervals  
24 of time.

25 (4) Appointed counsel may obtain, subject to later  
26 review, investigative, expert or other services without  
27 prior authorization if necessary for an adequate defense.  
28 If such services are obtained, the trial judge shall  
29 consider in an ex parte proceeding that timely procurement  
30 of necessary services could not await prior authorization.  
31 The judge may then authorize such services nunc pro tunc.

32 (5) An approved budget shall guide counsel's use of  
33 time and resources by indicating the services for which  
34 compensation is authorized. Case budget shall be  
35 re-evaluated when justified by changed or unexpected  
36 circumstances and shall be modified by the court when

1 reasonable and necessary for an adequate defense.

2 (b) Appointed trial counsel shall be compensated upon  
3 presentment and certification by the circuit court of a claim  
4 for services detailing the date, activity, and time duration  
5 for which compensation is sought. Compensation for appointed  
6 trial counsel may be paid at a reasonable rate not to exceed  
7 \$125 per hour. The court shall not authorize payment of bills  
8 that are not properly itemized. A request for payment shall be  
9 presented under seal and reviewed ex parte with a court  
10 reporter present.

11 Beginning in 2001, every January 20, the statutory rate  
12 prescribed in this subsection shall be automatically increased  
13 or decreased, as applicable, by a percentage equal to the  
14 percentage change in the consumer price index-u during the  
15 preceding 12-month calendar year. "Consumer price index-u"  
16 means the index published by the Bureau of Labor Statistics of  
17 the United States Department of Labor that measures the average  
18 change in prices of goods and services purchased by all urban  
19 consumers, United States city average, all items, 1982-84=100.  
20 The new rate resulting from each annual adjustment shall be  
21 determined by the State Treasurer and made available to the  
22 chief judge of each judicial circuit.

23 (c) Appointed trial counsel may also petition the court for  
24 certification of expenses for reasonable and necessary capital  
25 litigation expenses including, but not limited to,  
26 investigatory and other assistance, expert, forensic, and  
27 other witnesses, and mitigation specialists. Counsel may not  
28 petition for certification of expenses that may have been  
29 provided or compensated by the State Appellate Defender under  
30 item (c)(5) of Section 10 of the State Appellate Defender Act.  
31 The petitions shall be filed under seal and considered ex parte  
32 but with a court reporter present for all ex parte conferences.  
33 If the requests are submitted after services have been  
34 rendered, the requests shall be supported by an invoice  
35 describing the services rendered, the dates the services were  
36 performed and the amount of time spent. These petitions shall

1 be reviewed by both the trial judge and the presiding judge of  
2 the circuit court or the presiding judge's designee. The  
3 petitions and orders shall be kept under seal and shall be  
4 exempt from Freedom of Information requests until the  
5 conclusion of the trial and appeal of the case, even if the  
6 prosecution chooses not to pursue the death penalty prior to  
7 trial or sentencing.

8 (d) Appointed trial counsel shall petition the court for  
9 certification of compensation and expenses under this Section  
10 periodically during the course of counsel's representation.  
11 The petitions shall be supported by itemized bills showing the  
12 date, the amount of time spent, the work done and the total  
13 being charged for each entry. The court shall not authorize  
14 payment of bills that are not properly itemized. The petitions  
15 shall be filed under seal and considered ex parte but with a  
16 court reporter present for all ex parte conferences. The  
17 petitions shall be reviewed by both the trial judge and the  
18 presiding judge of the circuit court or the presiding judge's  
19 designee. If the court determines that the compensation and  
20 expenses should be paid from the Capital Litigation Trust Fund,  
21 the court shall certify, on a form created by the State  
22 Treasurer, that all or a designated portion of the amount  
23 requested is reasonable, necessary, and appropriate for  
24 payment from the Trust Fund. Certification of compensation and  
25 expenses by a court in any county other than Cook County shall  
26 be delivered by the court to the State Treasurer and paid by  
27 the State Treasurer directly from the Capital Litigation Trust  
28 Fund if there are sufficient moneys in the Trust Fund to pay  
29 the compensation and expenses. The petitions and orders shall  
30 be kept under seal and shall be exempt from Freedom of  
31 Information requests until the conclusion of the trial and  
32 appeal of the case, even if the prosecution chooses not to  
33 pursue the death penalty prior to trial or sentencing.  
34 Certification of compensation and expenses by a court in Cook  
35 County shall be delivered by the court to the county treasurer  
36 and paid by the county treasurer from moneys granted to the

1 county from the Capital Litigation Trust Fund.

2 (Source: P.A. 91-589, eff. 1-1-00.)

3 (725 ILCS 124/15)

4 Sec. 15. Capital Litigation Trust Fund.

5 (a) The Capital Litigation Trust Fund is created as a  
6 special fund in the State Treasury. The Trust Fund shall be  
7 administered by the State Treasurer to provide moneys for the  
8 appropriations to be made, grants to be awarded, and  
9 compensation and expenses to be paid under this Act. All  
10 interest earned from the investment or deposit of moneys  
11 accumulated in the Trust Fund shall, under Section 4.1 of the  
12 State Finance Act, be deposited into the Trust Fund.

13 (b) Moneys deposited into the Trust Fund shall not be  
14 considered general revenue of the State of Illinois.

15 (c) Moneys deposited into the Trust Fund shall be used  
16 exclusively for the purposes of providing funding for the  
17 prosecution and defense of capital cases and for providing  
18 funding for post-conviction proceedings in capital cases under  
19 Article 122 of the Code of Criminal Procedure of 1963 and in  
20 relation to petitions filed under Section 2-1401 of the Code of  
21 Civil Procedure in relation to capital cases as provided in  
22 this Act and shall not be appropriated, loaned, or in any  
23 manner transferred to the General Revenue Fund of the State of  
24 Illinois.

25 (d) Every fiscal year the State Treasurer shall transfer  
26 from the General Revenue Fund to the Capital Litigation Trust  
27 Fund an amount equal to the full amount of moneys appropriated  
28 by the General Assembly (both by original and supplemental  
29 appropriation), less any unexpended balance from the previous  
30 fiscal year, from the Capital Litigation Trust Fund for the  
31 specific purpose of making funding available for the  
32 prosecution and defense of capital cases and for the litigation  
33 expenses associated with post-conviction proceedings in  
34 capital cases under Article 122 of the Code of Criminal  
35 Procedure of 1963 and in relation to petitions filed under

1 Section 2-1401 of the Code of Civil Procedure in relation to  
2 capital cases. The Public Defender and State's Attorney in Cook  
3 County, the State Appellate Defender, the State's Attorneys  
4 Appellate Prosecutor, and the Attorney General shall make  
5 annual requests for appropriations from the Trust Fund.

6 (1) The Public Defender in Cook County shall request  
7 appropriations to the State Treasurer for expenses  
8 incurred by the Public Defender and for funding for private  
9 appointed defense counsel in Cook County.

10 (2) The State's Attorney in Cook County shall request  
11 an appropriation to the State Treasurer for expenses  
12 incurred by the State's Attorney.

13 (3) The State Appellate Defender shall request a direct  
14 appropriation from the Trust Fund for expenses incurred by  
15 the State Appellate Defender in providing assistance to  
16 trial attorneys under item (c)(5) of Section 10 of the  
17 State Appellate Defender Act and for expenses incurred by  
18 the State Appellate Defender in representing petitioners  
19 in capital cases in post-conviction proceedings under  
20 Article 122 of the Code of Criminal Procedure of 1963 and  
21 in relation to petitions filed under Section 2-1401 of the  
22 Code of Civil Procedure in relation to capital cases and  
23 for the representation of those petitioners by attorneys  
24 approved by or contracted with the State Appellate Defender  
25 and an appropriation to the State Treasurer for payments  
26 from the Trust Fund for the defense of cases in counties  
27 other than Cook County.

28 (4) The State's Attorneys Appellate Prosecutor shall  
29 request a direct appropriation from the Trust Fund to pay  
30 expenses incurred by the State's Attorneys Appellate  
31 Prosecutor and an appropriation to the State Treasurer for  
32 payments from the Trust Fund for expenses incurred by  
33 State's Attorneys in counties other than Cook County.

34 (5) The Attorney General shall request a direct  
35 appropriation from the Trust Fund to pay expenses incurred  
36 by the Attorney General in assisting the State's Attorneys

1 in counties other than Cook County and to pay for expenses  
2 incurred by the Attorney General when the Attorney General  
3 is ordered by the presiding judge of the Criminal Division  
4 of the Circuit Court of Cook County to prosecute or  
5 supervise the prosecution of Cook County cases and for  
6 expenses incurred by the Attorney General in representing  
7 the State in post-conviction proceedings in capital cases  
8 under Article 122 of the Code of Criminal Procedure of 1963  
9 and in relation to petitions filed under Section 2-1401 of  
10 the Code of Civil Procedure in relation to capital cases.

11 The Public Defender and State's Attorney in Cook County,  
12 the State Appellate Defender, the State's Attorneys Appellate  
13 Prosecutor, and the Attorney General may each request  
14 supplemental appropriations from the Trust Fund during the  
15 fiscal year.

16 (e) Moneys in the Trust Fund shall be expended only as  
17 follows:

18 (1) To pay the State Treasurer's costs to administer  
19 the Trust Fund. The amount for this purpose may not exceed  
20 5% in any one fiscal year of the amount otherwise  
21 appropriated from the Trust Fund in the same fiscal year.

22 (2) To pay the capital litigation expenses of trial  
23 defense and post-conviction proceedings in capital cases  
24 under Article 122 of the Code of Criminal Procedure of 1963  
25 and in relation to petitions filed under Section 2-1401 of  
26 the Code of Civil Procedure in relation to capital cases  
27 including, but not limited to, DNA testing, including DNA  
28 testing under Section 116-3 of the Code of Criminal  
29 Procedure of 1963, analysis, and expert testimony,  
30 investigatory and other assistance, expert, forensic, and  
31 other witnesses, and mitigation specialists, and grants  
32 and aid provided to public defenders, appellate defenders,  
33 and any attorney approved by or contracted with the State  
34 Appellate Defender representing petitioners in  
35 post-conviction proceedings in capital cases under Article  
36 122 of the Code of Criminal Procedure of 1963 and in

1 relation to petitions filed under Section 2-1401 of the  
2 Code of Civil Procedure in relation to capital cases or  
3 assistance to attorneys who have been appointed by the  
4 court to represent defendants who are charged with capital  
5 crimes.

6 (3) To pay the compensation of trial attorneys, other  
7 than public defenders or appellate defenders, who have been  
8 appointed by the court to represent defendants who are  
9 charged with capital crimes or attorneys approved by or  
10 contracted with the State Appellate Defender to represent  
11 petitioners in post-conviction proceedings in capital  
12 cases under Article 122 of the Code of Criminal Procedure  
13 of 1963 and in relation to petitions filed under Section  
14 2-1401 of the Code of Civil Procedure in relation to  
15 capital cases.

16 (4) To provide State's Attorneys with funding for  
17 capital litigation expenses and for expenses of  
18 representing the State in post-conviction proceedings in  
19 capital cases under Article 122 of the Code of Criminal  
20 Procedure of 1963 and in relation to petitions filed under  
21 Section 2-1401 of the Code of Civil Procedure in relation  
22 to capital cases including, but not limited to,  
23 investigatory and other assistance and expert, forensic,  
24 and other witnesses necessary to prosecute capital cases.  
25 State's Attorneys in any county other than Cook County  
26 seeking funding for capital litigation expenses and for  
27 expenses of representing the State in post-conviction  
28 proceedings in capital cases under Article 122 of the Code  
29 of Criminal Procedure of 1963 and in relation to petitions  
30 filed under Section 2-1401 of the Code of Civil Procedure  
31 in relation to capital cases including, but not limited to,  
32 investigatory and other assistance and expert, forensic,  
33 or other witnesses under this Section may request that the  
34 State's Attorneys Appellate Prosecutor or the Attorney  
35 General, as the case may be, certify the expenses as  
36 reasonable, necessary, and appropriate for payment from

1 the Trust Fund, on a form created by the State Treasurer.  
2 Upon certification of the expenses and delivery of the  
3 certification to the State Treasurer, the Treasurer shall  
4 pay the expenses directly from the Capital Litigation Trust  
5 Fund if there are sufficient moneys in the Trust Fund to  
6 pay the expenses.

7 (5) To provide financial support through the Attorney  
8 General pursuant to the Attorney General Act for the  
9 several county State's Attorneys outside of Cook County,  
10 but shall not be used to increase personnel for the  
11 Attorney General's Office, except when the Attorney  
12 General is ordered by the presiding judge of the Criminal  
13 Division of the Circuit Court of Cook County to prosecute  
14 or supervise the prosecution of Cook County cases.

15 (6) To provide financial support through the State's  
16 Attorneys Appellate Prosecutor pursuant to the State's  
17 Attorneys Appellate Prosecutor's Act for the several  
18 county State's Attorneys outside of Cook County, but shall  
19 not be used to increase personnel for the State's Attorneys  
20 Appellate Prosecutor.

21 (7) To provide financial support to the State Appellate  
22 Defender pursuant to the State Appellate Defender Act.

23 Moneys expended from the Trust Fund shall be in addition to  
24 county funding for Public Defenders and State's Attorneys, and  
25 shall not be used to supplant or reduce ordinary and customary  
26 county funding.

27 (f) Moneys in the Trust Fund shall be appropriated to the  
28 State Appellate Defender, the State's Attorneys Appellate  
29 Prosecutor, the Attorney General, and the State Treasurer. The  
30 State Appellate Defender shall receive an appropriation from  
31 the Trust Fund to enable it to provide assistance to appointed  
32 defense counsel and attorneys approved by or contracted with  
33 the State Appellate Defender to represent petitioners in  
34 post-conviction proceedings in capital cases under Article 122  
35 of the Code of Criminal Procedure of 1963 and in relation to  
36 petitions filed under Section 2-1401 of the Code of Civil

1 Procedure in relation to capital cases throughout the State and  
2 to Public Defenders in counties other than Cook. The State's  
3 Attorneys Appellate Prosecutor and the Attorney General shall  
4 receive appropriations from the Trust Fund to enable them to  
5 provide assistance to State's Attorneys in counties other than  
6 Cook County and when the Attorney General is ordered by the  
7 presiding judge of the Criminal Division of the Circuit Court  
8 of Cook County to prosecute or supervise the prosecution of  
9 Cook County cases. Moneys shall be appropriated to the State  
10 Treasurer to enable the Treasurer (i) to make grants to Cook  
11 County, (ii) to pay the expenses of Public Defenders, the State  
12 Appellate Defender, the Attorney General, the Office of the  
13 State's Attorneys Appellate Prosecutor, and State's Attorneys  
14 in counties other than Cook County, (iii) to pay the expenses  
15 and compensation of appointed defense counsel and attorneys  
16 approved by or contracted with the State Appellate Defender to  
17 represent petitioners in post-conviction proceedings in  
18 capital cases under Article 122 of the Code of Criminal  
19 Procedure of 1963 and in relation to petitions filed under  
20 Section 2-1401 of the Code of Civil Procedure in relation to  
21 capital cases in counties other than Cook County, and (iv) to  
22 pay the costs of administering the Trust Fund. All expenditures  
23 and grants made from the Trust Fund shall be subject to audit  
24 by the Auditor General.

25 (g) For Cook County, grants from the Trust Fund shall be  
26 made and administered as follows:

27 (1) For each State fiscal year, the State's Attorney  
28 and Public Defender must each make a separate application  
29 to the State Treasurer for capital litigation grants.

30 (2) The State Treasurer shall establish rules and  
31 procedures for grant applications. The rules shall require  
32 the Cook County Treasurer as the grant recipient to report  
33 on a periodic basis to the State Treasurer how much of the  
34 grant has been expended, how much of the grant is  
35 remaining, and the purposes for which the grant has been  
36 used. The rules may also require the Cook County Treasurer

1 to certify on a periodic basis that expenditures of the  
2 funds have been made for expenses that are reasonable,  
3 necessary, and appropriate for payment from the Trust Fund.

4 (3) The State Treasurer shall make the grants to the  
5 Cook County Treasurer as soon as possible after the  
6 beginning of the State fiscal year.

7 (4) The State's Attorney or Public Defender may apply  
8 for supplemental grants during the fiscal year.

9 (5) Grant moneys shall be paid to the Cook County  
10 Treasurer in block grants and held in separate accounts for  
11 the State's Attorney, the Public Defender, and court  
12 appointed defense counsel other than the Cook County Public  
13 Defender, respectively, for the designated fiscal year,  
14 and are not subject to county appropriation.

15 (6) Expenditure of grant moneys under this subsection  
16 (g) is subject to audit by the Auditor General.

17 (7) The Cook County Treasurer shall immediately make  
18 payment from the appropriate separate account in the county  
19 treasury for capital litigation expenses to the State's  
20 Attorney, Public Defender, or court appointed defense  
21 counsel other than the Public Defender, as the case may be,  
22 upon order of the State's Attorney, Public Defender or the  
23 court, respectively.

24 (h) If a defendant in a capital case in Cook County is  
25 represented by court appointed counsel other than the Cook  
26 County Public Defender, the appointed counsel shall petition  
27 the court for an order directing the Cook County Treasurer to  
28 pay the court appointed counsel's reasonable and necessary  
29 compensation and capital litigation expenses from grant moneys  
30 provided from the Trust Fund. The petitions shall be supported  
31 by itemized bills showing the date, the amount of time spent,  
32 the work done and the total being charged for each entry. The  
33 court shall not authorize payment of bills that are not  
34 properly itemized. The petitions shall be filed under seal and  
35 considered ex parte but with a court reporter present for all  
36 ex parte conferences. The petitions shall be reviewed by both

1 the trial judge and the presiding judge of the circuit court or  
2 the presiding judge's designee. The petitions and orders shall  
3 be kept under seal and shall be exempt from Freedom of  
4 Information requests until the conclusion of the trial and  
5 appeal of the case, even if the prosecution chooses not to  
6 pursue the death penalty prior to trial or sentencing. ~~These~~  
7 ~~petitions shall be considered in camera.~~ Orders denying  
8 petitions for compensation or expenses are final. Counsel may  
9 not petition for expenses that may have been provided or  
10 compensated by the State Appellate Defender under item (c)(5)  
11 of Section 10 of the State Appellate Defender Act.

12 (i) In counties other than Cook County, and when the  
13 Attorney General is ordered by the presiding judge of the  
14 Criminal Division of the Circuit Court of Cook County to  
15 prosecute or supervise the prosecution of Cook County cases,  
16 and excluding capital litigation expenses or services that may  
17 have been provided by the State Appellate Defender under item  
18 (c)(5) of Section 10 of the State Appellate Defender Act:

19 (1) Upon certification by the circuit court, on a form  
20 created by the State Treasurer, that all or a portion of  
21 the expenses are reasonable, necessary, and appropriate  
22 for payment from the Trust Fund and the court's delivery of  
23 the certification to the Treasurer, the Treasurer shall pay  
24 the certified expenses of Public Defenders and the State  
25 Appellate Defender from the money appropriated to the  
26 Treasurer for capital litigation expenses of Public  
27 Defenders and post-conviction proceeding expenses in  
28 capital cases of the State Appellate Defender and expenses  
29 in relation to petitions filed under Section 2-1401 of the  
30 Code of Civil Procedure in relation to capital cases in any  
31 county other than Cook County, if there are sufficient  
32 moneys in the Trust Fund to pay the expenses.

33 (2) If a defendant in a capital case is represented by  
34 court appointed counsel other than the Public Defender, the  
35 appointed counsel shall petition the court to certify  
36 compensation and capital litigation expenses including,

1 but not limited to, investigatory and other assistance,  
2 expert, forensic, and other witnesses, and mitigation  
3 specialists as reasonable, necessary, and appropriate for  
4 payment from the Trust Fund. If a petitioner in a capital  
5 case who has filed a petition for post-conviction relief  
6 under Article 122 of the Code of Criminal Procedure of 1963  
7 or a petition under Section 2-1401 of the Code of Civil  
8 Procedure in relation to capital cases is represented by an  
9 attorney approved by or contracted with the State Appellate  
10 Defender other than the State Appellate Defender, that  
11 attorney shall petition the court to certify compensation  
12 and litigation expenses of post-conviction proceedings  
13 under Article 122 of the Code of Criminal Procedure of 1963  
14 or in relation to petitions filed under Section 2-1401 of  
15 the Code of Civil Procedure in relation to capital cases.  
16 Upon certification on a form created by the State Treasurer  
17 of all or a portion of the compensation and expenses  
18 certified as reasonable, necessary, and appropriate for  
19 payment from the Trust Fund and the court's delivery of the  
20 certification to the Treasurer, the State Treasurer shall  
21 pay the certified compensation and expenses from the money  
22 appropriated to the Treasurer for that purpose, if there  
23 are sufficient moneys in the Trust Fund to make those  
24 payments.

25 (3) A petition for capital litigation expenses or  
26 post-conviction proceeding expenses or expenses incurred  
27 in filing a petition under Section 2-1401 of the Code of  
28 Civil Procedure in relation to capital cases under this  
29 subsection shall be considered under seal and reviewed ex  
30 parte with a court reporter present ~~in camera~~. Orders  
31 denying petitions for compensation or expenses are final.

32 (j) If the Trust Fund is discontinued or dissolved by an  
33 Act of the General Assembly or by operation of law, any balance  
34 remaining in the Trust Fund shall be returned to the General  
35 Revenue Fund after deduction of administrative costs, any other  
36 provision of this Act to the contrary notwithstanding.

1 (Source: P.A. 93-127, eff. 1-1-04; 93-605, eff. 11-19-03;  
2 93-972, eff. 8-20-04.)